

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

FARHAN MOHAMOUD TANI WARFAA,

Plaintiff,

v.

YUSUF ABDI ALI,

Defendant.

)
)
) **SECOND AMENDED COMPLAINT FOR**
) **TORTURE AND ATTEMPTED**
) **EXTRAJUDICIAL KILLING**

) **Civil Action No. 1:05-cv-00701-LMB-JFA**
)
)
)

) **JURY TRIAL DEMANDED**
)

Plaintiff Farhan Mohamoud Tani Warfaa (“Plaintiff”) files this Second Amended Complaint alleging as follows:

PRELIMINARY STATEMENT

1. This is an action for compensatory and punitive damages for torts in violation of international and domestic law. Plaintiff brings this action against Defendant Yusuf Abdi Ali, a.k.a. Tukeh (“Abdi Ali”) for his responsibility for the attempted extrajudicial killing and torture of Plaintiff.

2. Plaintiff alleges that Defendant Abdi Ali is personally liable for, or exercised command responsibility over or conspired with or aided and abetted subordinates in the Fifth Brigade of the Somali National Army (“Fifth Brigade”), or person or groups acting in coordination with the Fifth Brigade or under their control, to commit acts of attempted extrajudicial killing and torture. Accordingly, Plaintiff asserts that Defendant Abdi Ali is liable under domestic and international law for their injuries, pain and suffering.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiff's claims of torture and attempted extrajudicial killings pursuant to 28 U.S.C. § 1331 because the action arises under the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note).¹

4. On information and belief, Defendant Abdi Ali resides in Alexandria, Virginia. Therefore venue is proper in the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. § 1391(b) or (d).

PARTIES

Defendant

5. On information and belief, Defendant Abdi Ali is a native of Somalia and a permanent resident of the United States. He currently resides in Alexandria, Virginia.

6. Between approximately 1984 to 1989, Defendant Abdi Ali served as Commander of the Fifth Brigade of the Somali National Army. The Fifth Brigade was stationed in or near the northern city of Gebiley, Somalia.

7. On information and belief, Defendant Abdi Ali departed Somalia and eventually entered Canada in December 1990.

8. In 1992, Defendant Abdi Ali was deported from Canada for having committed gross human rights abuses in Somalia and came to the United States. After deportation proceedings in the United States were initiated against him, Defendant Abdi Ali voluntarily

¹ In the original Complaint (Dkt. No. 1), as well as in the Amended Complaint (Dkt. No. 89), Plaintiff brought claims under the Alien Tort Statute, 28 U.S.C. § 1350 ("ATS"), and under the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note). Plaintiff's ATS claims were dismissed on July 29, 2014. Dkt. No. 106. While Plaintiff's Second Amended Complaint does not reassert Plaintiff's ATS claims, Plaintiff hereby preserves for appeal all ATS claims previously brought by Plaintiff in his original Complaint and Amended Complaint.

departed the United States in or about July 1994. He returned to the United States on or about December 8, 1996.

Plaintiff

9. Plaintiff is a native, citizen and resident of Somalia. He brings this action for the attempted extrajudicial killing and torture that he suffered at the hands of Defendant Abdi Ali or his subordinates in the Fifth Brigade.

STATEMENT OF FACTS

10. Throughout the 1980s, the Somali National Army committed gross human rights abuses against the civilian population of Somalia, including the widespread and systematic use of torture, rape, arbitrary and prolonged detention, and mass executions. These human rights abuses were the hallmark of the military government that came to power in 1969 and brutally ruled Somalia until it was toppled in 1991.

11. In October 1969, a coup led by Major General Mohamed Siad Barre toppled the first and only democratic government of the new nation of Somalia. Power was assumed by the Supreme Revolutionary Council (“SRC”), which consisted primarily of the army officers who had supported and participated in the coup. The SRC suspended the existing Constitution, closed the National Assembly, abolished the Supreme Court and declared all political parties illegal. To further strengthen its grip on power, the military leadership, composed primarily of members of the Marehan, Ogadeni, and Dulbahante clans, systematically oppressed all other clans who opposed the military government.

12. The Isaaq clan, located primarily in the northwestern region of Somalia, was a special target of the government. The Isaaq were among the best educated and most prosperous Somalis and were perceived from the outset as potential opponents to the Barre regime. The government’s extreme oppression led members of the Isaaq clan to establish an opposition force

called the Somali National Movement (“SNM”) in 1981. The government responded by placing the northern region under military control. Throughout the 1980s, Somali National Army units were stationed in or near virtually every village and town throughout the region.

13. The Somali National Army committed widespread human rights abuses in its violent campaign to eliminate the SNM and any perceived supporters. It killed and looted livestock, blew up water reservoirs, burned homes, and tortured and detained alleged SNM supporters. Particularly after 1984, it also carried out a systematic policy of indiscriminately killing civilians as collective punishment for SNM activities. Such acts were intended to, and did, spread terror among Isaaq civilians in order to deter them from assisting the SNM.

14. The area around the northern town of Gebiley was a center of human rights abuses by the Somali National Army. Gebiley is surrounded by large, open agricultural and grazing land where the area’s semi-nomadic people farmed and tended their livestock. This region was a strategic focus of the military campaign because of its close proximity to the Ethiopian border, where SNM bases were located.

15. Defendant Abdi Ali commanded the army unit stationed in Gebiley. Between approximately 1984 through 1989, Defendant Abdi Ali, as commander of the Fifth Brigade, directed, and participated in, a brutal counterinsurgency campaign that refused to distinguish between civilians and combatants.

Plaintiff

16. At the time of the events at issue, Plaintiff was a farmer living in Jifo Uray, a small village located near the city of Gebiley. Plaintiff is a member of the Isaaq clan.

17. On or about mid-December, 1987, Defendant Abdi Ali came to the village of Jifo Uray. A few days earlier, a water tanker that had been engaged to provide water to nearby Ethiopian refugees had been stolen. Defendant Abdi Ali called a public meeting of the villagers.

He expressed his belief that the tanker had been stolen by the SNM. He threatened to execute everyone in Jifo Uray unless the water tanker was returned.

18. On or about a night a few days later in December of 1987, Plaintiff was sleeping near his family's hut in Jifo Uray. Very early in the morning, two army soldiers from the Fifth Brigade carrying AK-47 machine guns woke him up. He was taken to a central collection point where other farmers from the area were being detained by a group of army soldiers. All of the men were accused of supporting the SNM.

19. He and the other men were then forced to march for approximately thirty minutes to the village of Huunshalay, where an army truck was waiting for them. The soldiers forced them onto the truck and they were transported to the headquarters of the Fifth Brigade in Gebiley. Some members of the group were released because they were not Isaaq but rather members of clans that were allied with the government.

20. Plaintiff and the remaining ten members of the group were detained together in a small cell. There was no window or other ventilation and no toilet.

21. One night, around mid-January 1988, soldiers from the Fifth Brigade took Plaintiff to a roofed building with open sides in the army compound. He was hit on the head with the butt of a gun and fell forward onto the ground. The soldiers tightly tied his hands and feet together behind his back so that his body was arched backward in a slightly-tilted U shape, with his arms and legs high in the air, causing him excruciating pain. This form of torture was called the "Mig," because it placed the prisoner's body in a shape that resembled the Somali Air Force's MIG aircraft, with its swept-back wings. The soldiers took his clothing and repeatedly kicked his head with their boots. As the soldiers tortured him, they interrogated him about the SNM fighters the Army claimed had stolen the water tanker.

22. Plaintiff was then taken to Defendant Abdi Ali's office. His hands and legs were chained. Defendant Abdi Ali also questioned him about the SNM fighters who had allegedly stolen the water tanker and his family's alleged support for the SNM. After Defendant Abdi Ali finished interrogating him, Plaintiff was given back his clothing and returned to his cell.

23. Two nights later, Plaintiff was again taken from his cell, stripped naked, and beaten until he was unconscious. Each time he fainted, the soldiers poured cold water on him and then beat him again. The soldiers warned him he would die if he did not reveal the identities of the SNM fighters who stole the water tanker.

24. After an hour, Plaintiff was once again taken to Defendant Abdi Ali's office. His hands and legs were chained. Defendant Abdi Ali questioned him about the SNM fighters who had allegedly stolen the water tanker and his family's alleged support for the SNM.

25. Plaintiff was tortured no fewer than nine times between January and March 1988. On more than one occasion, Defendant Abdi Ali was present while he was tortured.

26. One evening in early March 1988, while Plaintiff was being interrogated by Defendant Abdi Ali, the SNM attacked the Fifth Brigade's headquarters. Defendant Abdi Ali spoke into his walkie-talkie and told his soldiers to either capture or kill the SNM fighters. Defendant Abdi Ali then took out his pistol and fired five shots at Plaintiff. Plaintiff was hit on the wrist and right leg and fell to the floor unconscious. Defendant Abdi Ali then ordered his bodyguards to bury Plaintiff's body.

27. The bodyguards then removed Plaintiff from Defendant Abdi Ali's office. They soon recognized that he was not dead. They agreed to accept a bribe from Plaintiff's family and subsequently released him.

GENERAL ALLEGATIONS

28. Plaintiff alleges that Defendant Abdi Ali is personally liable for acts of torture and attempted extrajudicial killing by virtue of his direct or indirect participation, including committing the acts himself or directing or ordering his subordinates in the Fifth Brigade of the Somalia National Army to commit these acts.

29. Plaintiff alleges that Defendant Abdi Ali is also liable because he conspired with, or aided and abetted, subordinates in the Fifth Brigade of the Somali National Army to commit acts of torture and attempted extrajudicial killing. Defendant Abdi Ali is therefore also jointly and severally liable for the actions of members of the Fifth Brigade, all of which were actions undertaken as part of a common plan, design and scheme.

30. Plaintiff alleges that Defendant Abdi Ali is also liable because, as commander of the Fifth Brigade of the Somali National Army, he possessed and exercised command and control over the Fifth Brigade. He also acquiesced in, and permitted, groups acting in coordination with the Fifth Brigade, to commit human rights abuses.

31. Defendant Abdi Ali had the legal authority and practical ability to exert control over subordinates in the Fifth Brigade, or persons or groups acting in coordination with the Fifth Brigade, or under their control, who participated in the torture and attempted extrajudicial killing described herein. Defendant Abdi Ali's command over the Fifth Brigade included the authority and responsibility to give orders to, set policy for and manage the affairs of forces under his control, and to appoint, remove and discipline such forces.

32. As commander of the Fifth Brigade, Defendant Abdi Ali had a duty under customary international law and multilateral treaties to ensure the protection of civilians, to prevent violations of international law by the Fifth Brigade, and to ensure that all persons under his command were trained in, and complied with, the laws of warfare and international law,

including the prohibitions against torture and extrajudicial killing. Furthermore, Defendant Abdi Ali was under a duty to investigate, prevent and punish violations of international law committed by members of the Fifth Brigade under his command.

33. Defendant Abdi Ali failed or refused to take all necessary measures to investigate and prevent these abuses, or to punish personnel under his command for committing such abuses.

34. The acts of torture and attempted extrajudicial killing inflicted upon Plaintiff were part of a pattern and practice of systematic or widespread human rights violations against the civilian population of Somalia. At all relevant times, Defendant Abdi Ali knew or reasonably should have known of the pattern and practice of gross human rights abuses perpetrated against the civilian population by subordinates under his command, including the abuses committed against Plaintiff.

Equitable Tolling of the Statute of Limitations

35. The Statute of Limitations should be tolled during periods after the fall of the Barre regime when Defendant Abdi Ali has resided outside the United States. Defendant Abdi Ali has resided in the United States for less than ten years since he first arrived in the United States after the fall of the Barre regime. Plaintiff first filed this case against Defendant Abdi Ali on November 10, 2004, and the Court's April 29, 2005 further tolled the statute until the date of this re-filing. Therefore the filing of this complaint is timely.

36. The Statute of Limitations should also be tolled because prior to 1997, Isaaq victims of human rights abuses committed in the 1980s by the Somali Armed Forces, or persons or groups acting in coordination with the Somali Armed Forces, could not have been expected to pursue a cause of action in the United States. Until approximately 1997, victims' reasonable fear of reprisals against themselves or members of their families still residing in Somalia served as an

insurmountable deterrent to such action. Also, until approximately 1997, it would not have been possible to conduct safely investigation and discovery in Somalia in support of such a case.

37. Throughout the 1990s, Somalia fell into increasing chaos. Following the violent defeat of the military government in 1991, Somalia's central government collapsed. Fighting among rival clan leaders resulted in the killing, displacement, and mass starvation of tens of thousands of Somali citizens. The ensuing chaos led the United Nations to intervene militarily in 1992, though it proved incapable of restoring even a minimum level of order. Somalia's clan-based civil war and anarchic violence proved to be so brutal that it drove the United Nations from the country in 1994. Rival clan militias continued to commit gross and systematic human rights abuses in the years after the United Nations' departure, including the deliberate killing and kidnapping of civilians because of their clan membership.

38. During these years, conditions in Somalia precluded human rights cases against former commanders of the Somali Armed Forces from being brought either in Somalia or the United States. Throughout the time period alleged in the complaint, and up to the present, the Plaintiff either lived in Somalia or had immediate family still residing there. No national government existed in Somalia to protect them from the continuing clan-based violence. Gross and systematic human rights violations openly committed by rival clans had a further chilling effect. Pursuit of human rights claims, even in the United States, would have exposed victims and their families to acts of retribution that discouraged them from pursuing such a course. Witnesses also reasonably feared acts of reprisal for assisting in such cases.

39. The return of stability sufficient to permit victims of Barre-era human rights abuses to come forward has been a slow and uneven process. Stable conditions still do not exist

in most regions of the country. It took until approximately 1997 for even one region to establish the conditions that permitted victims to consider bringing their claims.

40. This region, the former British protectorate of Somaliland, is dominated by the Isaaq clan. In 1991, it declared its independence, reclaimed its previous name, and seceded from Somalia. A rudimentary civil administration was established there in 1993, but major armed conflicts in 1994 and 1996 plunged the region back into turmoil. Since about 1997, Somaliland's government has exercised a modicum of authority over its territory.

Absence of Remedies in Somalia

41. Somalia remains without a functioning national government and national judicial system in which victims of Barre-era human rights abuses could bring their claims. Shari'a courts operate in some regions of the country, filling the vacuum created by the absence of governmental authority, but such courts impose religious and local customary law often in conflict with universal human rights conventions. Despite the very recent selection of a former warlord as president, Somalia still does not have a functioning national government with a court system capable of reviewing human rights abuses committed by the military government in the 1980s. The country remains under the de facto control of competing clan leaders, warlords and criminal gangs, many of whom commit or countenance the commission of serious human rights abuses.

42. Somaliland does not offer a forum in which victims of human rights abuses can bring their claims. Although civil order has prevailed there since 1997, it remains impossible to seek judicial remedies in its courts for such claims. The Somaliland government's human rights record is weak, and human rights activists are frequently arrested and detained. The judicial system remains closely tied to religious and political elites and lacks properly trained judges and other legal personnel. Furthermore, no former members of the Barre government reside within

Isaaq-dominated Somaliland. Thus, the people who should be held accountable reside beyond the jurisdictional reach of the Somaliland courts. Accordingly, there were and are no adequate and available remedies for Plaintiff to exhaust in Somalia.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (ATTEMPTED EXTRAJUDICIAL KILLING)

43. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 42 as if fully set forth herein.

44. The attempted murder of Plaintiff described herein constitutes an attempted extrajudicial killing as defined by the Torture Victim Protection Act, Pub. L. No. 102- 256, 106 Stat. 73 (codified at 28 U.S.C. § 1350 note).

45. The attempted extrajudicial killing of Plaintiff was not authorized by any court judgment. Plaintiff was never charged with, convicted of or sentenced for any crime.

46. Defendant Abdi Ali personally committed, or exercised command responsibility over or directed, ordered, conspired with or aided and abetted soldiers in the Fifth Brigade to commit the attempted extrajudicial killing of Plaintiff.

47. Defendant Abdi Ali's acts or omissions described above and the acts committed by his subordinates against Plaintiff were committed under actual or apparent authority, or color of law, of the government of Somalia.

48. As a result of his attempted extrajudicial killing, Plaintiff is entitled to damages in an amount to be determined at trial.

49. Defendant Abdi Ali's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF
(TORTURE)**

50. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 49 as if fully set forth herein.

51. The acts described herein constitute torture as defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 Note).

52. The acts described herein were inflicted deliberately and intentionally upon Plaintiff for purposes that include, among others, intimidating or coercing him, discriminating against him for his presumed political beliefs, or discriminating against him for his membership in a specific ethnic group.

53. The torture of Plaintiff did not arise from, and was not inherent in or incidental to, lawful sanctions.

54. Defendant Abdi Ali personally tortured, or exercised command responsibility over or directed, ordered, conspired with or aided and abetted soldiers in the Fifth Brigade to torture, Plaintiff.

55. Defendant Abdi Ali's acts or omissions described above and the acts committed by his subordinates caused the torture of Plaintiff and caused him to suffer severe mental pain and suffering.

56. Defendant Abdi Ali's acts or omissions described above and the acts committed by his subordinates against Plaintiff were committed under actual or apparent authority, or color of law, of the government of Somalia.

57. As a result of the torture described above, Plaintiff is entitled to damages in an amount to be determined at trial.

58. Defendant Abdi Ali's acts were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For compensatory damages according to proof;
2. For punitive and exemplary damages, according to proof;
3. For prejudgment interest as allowed by law;
4. For attorneys' fees and costs of suit, according to proof;
5. For any such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: June 6, 2018

FARHAN MOHAMOUD TANI WARFAA
By Counsel

By: /s/ Lindsay Barnes

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2018, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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